

No. A11-92

State of Minnesota
In Court of Appeals

TARA PETERSON,

Relator,

vs.

NORTHEAST BANK-MINNEAPOLIS,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

TARA PETERSON


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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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Legal Issue

Under Minnesota law, certain payments received by an applicant are deducted from the applicant's weekly unemployment benefit amount. Tara Peterson filed a discrimination lawsuit against Northeast Bank following her termination from employment in August 2009. Peterson entered into a settlement agreement with her former employer under which she received a total sum of \$50,000. A payment of \$18,423 was made for lost wages and subjected to applicable state and federal income taxes for which Peterson received a W-2 Form. Two additional payments were allocated for personal injury damages and attorneys' fees.

Under the law, back pay received by an applicant within 24 months of the establishment of the benefit account with respect to any week occurring during the benefit year must be deducted from unemployment benefits paid for that week. Should Peterson's payment for lost wages be deducted from her unemployment benefits?

Unemployment Law Judge Richard Croft found that a payment of \$18,423 was deductible from Peterson's unemployment benefits for the period January 21, 2010, through July 24, 2010. Peterson's ineligibility during that time period resulted in an overpayment.

Statement of the Case

Tara Peterson (“Peterson”) established a benefit account with the Minnesota Department of Employment and Economic Development (the “Department”). A Department adjudicator determined that Peterson was ineligible for benefits for the period January 21, 2010, through July 24, 2010, because she received a severance payment in the amount of \$18,423 after separating from her employer.¹ Peterson appealed that determination, and Unemployment Law Judge (“ULJ”) Richard Croft conducted a de novo hearing. The ULJ found that \$18,423 of Peterson’s total settlement amount was properly deducted from her unemployment benefits and applied the deduction to the period of January 21, 2010, through July 24, 2010.² Peterson filed a request for reconsideration with the ULJ, who affirmed.³

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Peterson under Minn. Stat. § 268.105, subd. 7(a) (2010) and Minn. R. Civ. App. P. 115. The Department is charged with the responsibility of administering and supervising the unemployment insurance program.⁴ Unemployment benefits payable are paid from state funds, the unemployment insurance trust fund, not by an employer or employer funds.⁵

¹ E-2. Transcript references will be indicated “T.” Exhibits in the record will be “E-” with the number following.

² Appendix to Department’s Brief, A6-A9.

³ Appendix, A1-A5.

⁴ Minn. Stat. § 116J.401, subd. 1(18).

⁵ Minn. Stat. § 268.069, subd. 2 (2010).

Because unemployment benefits are state funds, the Department is the primary responding party in this case.⁶ The Department does not represent the co-respondent in this proceeding, and this brief should not be considered advocacy for Northeast Bank.

Statement of Facts

Tara Peterson was employed by Northeast Bank as a full-time customer service representative from August 11, 1998, through August 4, 2009.⁷ Her final rate of pay was \$17.98 per hour.⁸

Peterson was diagnosed with an aggressive form of leukemia in June 2006. She underwent a stem cell transplant in October 2006 and returned to work in February 2007. Peterson spent the next couple of years working while recovering from several transplant related complications until her employer ultimately discharged her in August 2009.⁹ She began collecting unemployment benefits in September of 2009, with a weekly benefit amount of \$363.

In November 2009, Peterson filed a lawsuit against Northeast Bank alleging disability discrimination under the Minnesota Human Rights Act (MHRA).¹⁰ Peterson asserted that, as a result of the bank's adverse treatment and termination, she suffered damages including, but not limited to, emotional distress,

⁶ Minn. Stat. § 268.105, subd. 7(e) (2010).

⁷ T. 10.

⁸ *Id.*

⁹ E-3.

¹⁰ E-12.

mental and physical anguish, pain and suffering and lost wages.¹¹ Peterson and Northeast Bank negotiated a settlement and executed their final agreement in January 2010. According to the terms of the settlement agreement, Northeast Bank agreed to pay Peterson a total sum of \$50,000 to be remitted in three payments.¹² A payment to Peterson in the gross amount of \$18,423 for lost wages was subject to income tax deductions and reported on IRS Form W-2. Another payment in the amount of \$18,423 was allocated for damages resulting from Peterson's alleged emotional injury for which the bank provided a Form 1099, and a final payment in the amount of \$13,154 was designated as attorneys' fees.¹³

Standard of Review

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Peterson's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.¹⁴

¹¹ E-12, p. 8, 9, 11.

¹² E-11.

¹³ *Id.*

¹⁴ Minn. Stat. § 268.105, subd. 7(d)(1)-(6) (2010).

The Court of Appeals has held in *Skarhus v. Davannis*, that it views the ULJ's factual findings "in the light most favorable to the decision,"¹⁵ and will not disturb the ULJ's factual findings when the evidence substantially sustains them.¹⁶ The Supreme Court in *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency* defined substantial evidence as "such evidence as a reasonable mind might accept as adequate to support a conclusion."¹⁷ The Supreme Court in *State v. Thompson* stated that statutory interpretation and application is a question of law that the courts review de novo.¹⁸

Argument

The general requirements for unemployment-benefits eligibility are set forth in Minn. Stat. § 268.085, subd. 1. Nonetheless, an applicant who satisfies those requirements may be ineligible for unemployment benefits or have the amount of those benefits reduced if the applicant receives payment from an employer after separation from employment.¹⁹ The effect of the payment on the applicant's eligibility for, or amount of, unemployment benefits depends on the purpose of the payment.

Here, the ULJ determined that a portion of Peterson's settlement amount

¹⁵ 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996)).

¹⁶ *Id.* (citing Minn. Stat. § 268.105, subd. 7(d)).

¹⁷ 644 N.W.2d 457, 466 (Minn. 2002).

¹⁸ 754 N.W. 2d 352, 355 (Minn. 2008).

¹⁹ Minn. Stat. § 268.085, subs. 3, 5, 6 (2009).

was a severance payment and therefore deductible under Minn. Stat. §268.085, subd. 3(a) (2). On appeal, Peterson argues that the \$18,423 amount was neither a “severance payment” within the meaning of Minn. Stat. §268.085, subd. 3, nor “wages” within the meaning of §268.035, subd. 29. While the Department acknowledges that the ULJ applied the incorrect statute to support the decision, the \$18,423 payment is clearly deductible from Peterson’s unemployment benefits under Minnesota law nonetheless.

The settlement agreement in this case specifically allocates a portion of the payment “for alleged damages resulting from a purported emotional personal injury” and another portion for attorneys’ fees.²⁰ The bank did not withhold taxes on either of these amounts. However, the settlement also included an additional payment of \$18,423, with amounts withheld for federal and state taxes. According to Sue Johnson, the bank’s human resource director, taxes were withheld from that portion of the settlement because it was the amount the bank agreed to pay Peterson for lost wages.²¹ Thus, it’s clear that this amount received by Peterson constitutes back pay under Minnesota law.

Peterson contends that, because the bank already compensated her for services she performed through her last day of work, she wasn’t owed any back pay and therefore the payment could not be considered such.²² Peterson’s

²⁰ E-11.

²¹ T. 18.

²² T. 14-15.

understanding of back pay, however, is misguided. Minnesota's unemployment statute defines "back pay" as "a retroactive payment of money by an employer to an employee or former employee for lost wages."²³ Peterson's lawsuit sought "lost wages" which, in this context constitutes income that she would have received but for the actions of the bank.

According to Minnesota Statute §268.085, subd. 6(a):

Back pay received by an applicant within 24 months of the establishment of the benefit account with respect to any week occurring during the benefit year must be deducted from unemployment benefits paid for that week. If the back pay is not paid with respect to a specific period, the back pay must be applied to the period immediately following the last day of employment.²⁴

Here, the back pay received by Peterson was not paid with respect to a specific period, and therefore it should be applied to the period immediately following her last day of employment, which was August 4, 2009. Although the ULJ erred by finding that Peterson received a severance payment following her separation from employment, he correctly determined that the payment should be deducted from Peterson's unemployment benefits. The payment is deductible because the amount constitutes back pay; although the deductions should be applied to the period immediately following Peterson's last day of employment.

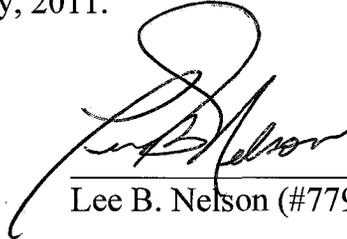
²³ Minn. Stat. §268.035, subd. 3.

²⁴ Minn. Stat. §268.085, subd. 6(a).

Conclusion

Unemployment Law Judge Richard Croft correctly concluded that \$18,423 of Peterson's settlement amount should be deducted from her unemployment benefits but incorrectly applied the deductions to the period following when they were paid. The Department requests that the Court affirm the decision of the Unemployment Law Judge to deduct the payment from Peterson's unemployment benefits, but modify the application of the deductions to the period immediately following Peterson's last day of employment.

Dated this 18th day of May, 2011.



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